

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
CHEF-REDDY FOODS CORP.,)
)
Appellant,)
)
v.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Respondent.)

PCHB No. 575

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being an appeal of a \$3,000.00 civil penalty for an alleged breach of a condition of a waste discharge permit; having come on regularly for hearing before the Pollution Control Hearings Board; and appellant Chef-Reddy Foods Corp. appearing through its attorney, Steven H. Sackmann, and respondent Washington State Department of Ecology appearing through its attorney, Thomas C. Evans; and hearing examiner present at the hearing being Bernard G. Lonctot; and the Board having read the transcript, examined the exhibits, records and files herein and having entered on the 25th day of September, 1974, its proposed

1 Findings of Fact, Conclusions of Law and Order upon all parties herein by
2 certified mail, return receipt requested and twenty days having elapsed
3 from said service; and

4 The Board having received no exceptions to said proposed Findings,
5 Conclusions and Order; and the Board being fully advised in the premises;
6 now therefore,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
8 Findings of Fact, Conclusions of Law and Order, dated the 25th day of
9 September, 1974, and incorporated by this reference herein and attached
10 hereto as Exhibit A, are adopted and hereby entered as the Board's Final
11 Findings of Fact, Conclusions of Law and Order herein.

12 DONE at Lacey, Washington this 3rd day of December, 1974.

13 POLLUTION CONTROL HEARINGS BOARD

14 Walt Woodward
15 WALT WOODWARD, Chairman

16 W. A. Gissberg
17 W. A. GISSBERG, Member

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29 CONCLUSIONS OF LAW AND ORDER

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POLLUTION CONTROL HEARINGS BOARD
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IN THE MATTER OF
CHEF-REDDY FOODS CORP.,

Appellant,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 575

FINDINGS OF FACT
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This matter, the appeal of a \$3,000.00 civil penalty for an alleged breach of a condition of a waste discharge permit in violation of RCW 90.48.180, came before Bernard G. Lonctot, hearing examiner, at an informal hearing in Spokane, at 9:30 a.m. August 13, 1974. Appellant was represented by its attorney, Steven H. Sackmann; respondent was represented by its attorney, Thomas C. Evans. Jo Ann Ames, Spokane court reporter, recorded the testimony.

Having read the transcript and seen the exhibits, the Pollution Control Hearings Board makes the following

EXHIBIT A

FINDINGS OF FACT

I.

Appellant is the Chef-Reddy Foods Corporation, operator of a potato processing plant. It is located in Othello, Washington. At all times in this matter, appellant owned, maintained, and operated two waste water storage lagoons on its property.

II.

The larger of the two lagoons, which lies to the north, does not directly concern us. However, both lagoons at sometime each year store water mixed with caustic agents. Each year, the smaller pond is drawn down before winter and refilled with clean water. Thereafter, this water is sprinkled on appellant's pasture in an effort to dilute the pollutants remaining in the small pond. This process is carried on for a period of a week to ten days. During the winter months, the small pond is used to settle mud out of water used solely for washing the dirt from the potatoes.

III.

On January 23, 1974, Mr. Duane Michaels, a resident farmer in the Othello area of Adams County, complained about water pollution in his creek to the Health Department. In response to this complaint, Jim Hinckley, an environmental health specialist with the Franklin Health District in Kennewick, Washington, visited the site. At the site, he saw water discharging through a gate valve and pipe from appellant's small lagoon into a creek. He referred the matter to the Department of Ecology. Michaels, the complainant, also telephoned a complaint to the Department of Ecology on January 24, 1974, concerning

FINDINGS OF FACT,
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AND ORDER

1 the same matter.

2 IV.

3 On January 25, 1974, Claude Sappington, an environmental quality
4 advisor for the Department of Ecology, was taken to the site by Mr.
5 Hinckley and Mr. Mike Schleicher of the Health Department. Like the
6 day before, water was flowing through the gate valve and pipe from
7 appellant's small lagoon into Othello Creek, a tributary of the
8 Columbia River.

9 V.

10 During the period of January 25 through January 28, 1974, water
11 samples were taken by Mr. John C. Bernhardt and Mr. Scott Jeane, both
12 from the Department of Ecology. Three positions were chosen to sample
the water: one hundred feet above the creek; at the discharge outlet;
14 and approximately one mile below the discharge outlet. Mr. Bernhardt
15 also observed a discharge of approximately 2 cubic feet per second of
16 water from the appellant's lagoon to the creek. The water was "foamy
17 and sudsy" according to Mr. Bernhardt. (See also respondent's exhibit 4).
18 Mr. Bernhardt did not participate in the laboratory analysis of the
19 water samples taken.

20 VI.

21 Water from an adjoining feedlot drained into appellant's small
22 lagoon. Surface water from appellant's pastures also flowed into the
23 lagoon. At the time of these observations on January 25, the lagoon
24 was full.

25 VII.

Appellant holds Waste Discharge Permit No. 3288 which is valid

27 FINDINGS OF FACT,
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AND ORDER

1 until January 29, 1975. The pertinent conditions of this permit state
2 in Section B:

3 3. "Effluent from the treatment facilities
4 is to be disposed of on land by means
5 of a sprinkler irrigation system maintained
6 and operated by Chef Reddy Foods Corporation.

7

8 5. In the event the permittee is temporarily
9 unable to comply with any of the above
10 conditions of this permit, due to breakdown
11 of equipment or other cause, the permittee
is to immediately notify this Commission.
This report is to include pertinent
information as to the cause and what steps
are being taken to correct the problem
and prevent its recurrence."

12 Section A of the permit defines "waste" as the "total volume of cooling
13 and contaminated waters to be discharged."

14 The evidence shows that the discharged effluent from appellant's
15 small lagoon was "waste" water within the meaning of this permit.

16 VIII.

17 Notice of a \$3,000.00 civil penalty for the violation of conditions
18 3 and 5 in Section B of permit no. 3288 was issued by the Department of
19 Ecology for the direct discharge of industrial wastes into the waters
20 of the state during the period of January 24-28, 1974. Appellant's
21 application for relief from the penalty assessed was denied by the
22 Director of the Department of Ecology. This \$3,000.00 civil penalty
23 constitutes the subject matter of this appeal.

24 IX.

25 Any Conclusion of Law hereinafter deemed to be a Finding of Fact
26 is herewith adopted as same.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW

AND ORDER

1 From these Findings, the Pollution Control Hearings Board comes
2 to these

3 CONCLUSIONS OF LAW

4 I.

5 RCW 90.48.180 provides in part: " . . . the commission shall have
6 authority to specify conditions necessary to avoid . . . pollution in
7 each permit under which waste material may be disposed of by the
8 permittee."

9 RCW 90.48.144 provides in part that:

10 "Every person who:

- 11 (1) Violates the terms or conditions
12 of a waste discharge permit issued
13 pursuant to RCW 90.48.180 . . .
14 shall incur, in addition to any
15 other penalty provided by law,
16 a penalty in an amount of up to
17 five thousand dollars a day for
18 every such violation. Each and every
19 such violation shall be a separate
20 and distinct offense, and in case
21 of a continuing violation, every
22 day's continuance shall be and be
23 deemed to be a separate and distinct
24 violation."

25 The statute also provides for remission or mitigation of any
26 penalty, an appeal to this Board, and for the collection of the penalty.

21 II.

22 Appellant violated Waste Discharge Permit No. 3288 by allowing the
23 direct discharge of waste water from its industrial operations into the
24 waters of the state on the 24th, 25th, 26th, 27th and 28th days of
25 January, 1974. Therefore, appellant violated RCW 90.48.180 and is
26 subject to the penalty provisions of RCW 90.48.144.

27 FINDINGS OF FACT,
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AND ORDER

1 III.

2 Appellant has shown no substantial reason for the mitigation of
3 the penalty.

4 IV.

5 Any Finding of Fact which should be deemed a Conclusion of Law
6 is hereby adopted as such.

7 Therefore, the Pollution Control Hearings Board issues this
8 ORDER

9 The appeal is denied.

10 The assessment of a \$3,000.00 civil penalty for the breach of the
11 conditions of a waste discharge permit is affirmed.

12 DATED this 25th day of September, 1974.

13 POLLUTION CONTROL HEARINGS BOARD

14 Walt Woodward
15 WALT WOODWARD, Chairman

16 W. A. Gissberg
17 W. A. GISSBERG, Member
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26 FINDINGS OF FACT,
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